IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 790 of 1995

in

SPECIAL CIVIL APPLICATIONNo 4170 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and

MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO No

5. Whether it is to be circulated to the Civil Judge? : No

STATE OF GUJARAT

Versus

DC CHAUHAN

Appearance:

MR MA BUKHARI, AGP for Appellants

MR RM PARMAR FOR MR JV BHAIRAVIA for Respondent No. 1

MR DB MEHTA for Respondent No. 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE A.M.KAPADIA

Date of decision: 12/01/2000

ORAL JUDGEMENT

(Per : Panchal, J.)

By means of filing this appeal under clause 15 of the Letters Patent, the State of Gujarat as well as Development Commissioner, Gujarat State, Gandhinagar have challenged interim order dated July 19, 1995 passed by the learned Single Judge in Special Civil Application No. 4170/95, by which the Chief Secretary of the State of Gujarat is directed to hold an inquiry in the matter and determine the responsibility of the officer concerned who had neglected or made default in filing reply to the writ petition and realise the amount of cost from salary of that officer, whereas the appellant no.1 is directed to deposit an amount of costs of Rs.2000/- with the High Court Legal Aid Committee, while seeking time to file reply affidavit to the petition.

2. The respondent no.1- Mr. D.C.Chauhan instituted Special Civil Application No. 4170/94 under Article 226 of the Constitution praying the Court to issue a writ of mandamus to quash and set aside order dated March 31, 1982 passed by the Deputy District Development Officer (Revenue), Surendranagar suspending him from service as well as order dated April 5, 1982 passed by the Taluka Development Officer, Dhangadhra suspending him from service. He also prayed to direct the respondents-authorities to grant subsistence allowance to him in the new pay-scale of Rs.950 - 1500 with effect from January 1, 1986. We may state that the petition was filed against the present appellants as well as District Development Officer, District Panchayat, Surendranagar and Taluka Development Officer, Taluka Panchayat, Dhrangadhra. The petition was placed for admission hearing before the learned Single Judge on March 23, 1994 and notice to the respondents was issued making it returnable on March 30, 1994. Thereafter the petition was adjourned from time to time. An affidavit-in-reply was filed by Deputy District Development Officer on February 3, 1995 controverting the averments made in the petition and no reply was filed on behalf of the appellants controverting the averments made in the petition. On July 19, 1995, a motion was made on behalf of the present appellants to adjourn the matter to enable them to file reply to the writ petition. The learned Single Judge by the impugned interim order granted time of six weeks to the appellants to file reply to the writ

petition, but directed the Chief Secretary of the State of Gujarat to hold an inquiry to determine the responsibility of the officer concerned who neglected or made default in filing reply to the petition and to realise the amount of cost from salary of that officer. The learned Single Judge also directed the appellant no.1 to deposit the amount of costs of Rs. 2000/- with the High Court Legal Aid Committee. These directions have given rise to the present appeal.

3. Mr. M.A.Bukhari, learned A.G.P. submitted that the State of Gujarat has no role to play in the matter, inasmuch as orders were passed by the Taluka Panchayat as well as District Development Officer and, therefore, appellant no.1 should not have been directed to deposit the amount of costs of Rs.2000/- with the High Court Legal Aid Committee while granting time to file an affidavit-in-reply to the petition. What was stressed by the learned Counsel for the appellants was that in the event of appellants' not filing an affidavit-in-reply, learned Single Judge should have proceeded with the matter without waiting for the affidavit, but should not have directed the appellant no.1 to deposit the amount of costs of Rs. 2000/- with the High Court Legal Aid Committee, nor the Chief Secretary could have been directed to hold an inquiry into the matter and determine the responsibility of the officer concerned who had neglected or made default in filing reply to the writ petition and recover the amount of cost from salary of that officer. According to the learned Counsel for the appellants, observations made by the learned Single Judge in the interim order dated July 19, 1995 are not warranted in the facts of the case and, therefore, the appeal should be accepted.

Mr. D.B.Mehta, learned Counsel for respondents no.2 & 3 has adopted the arguments advanced by the learned Counsel for the appellants and pleaded that the interim order passed by the learned Single Judge deserves to be set aside.

Mr. R.M.Parmar, learned advocate appearing for Mr. J.V.Bhairavia, learned Counsel for respondent no.1, submitted that the interim order passed by the learned Single Judge is not in favour of respondent no.1 and, therefore, he would abide by the decision of the appellate Court.

4. Heard the learned Counsel for the parties.A bare reading of the petition makes it manifest that the State of Gujarat has no role to play in the petition at all and, therefore, non-filing of reply by the appellants should not have been viewed seriously. Admittedly, an

affidavit-in-reply was filed on behalf of respondent no.2 by Deputy District Development Officer on February 3, 1995, wherein the averments made in the petition were controverted. The orders which were impugned, were neither passed by appellant no.1 nor by the appellant no.2 and the original petitioner was suspended from service by respondents no.2 & 3 pending a criminal case. The subsistence allowance was required to be paid by respondents no.2 & 3 and not by the present appellants. Under the circumstances, in our view, the learned Single Judge was not justified in directing the Chief Secretary of the State of Gujarat to hold an inquiry into the matter and determine responsibility of the officer concerned who had neglected or made default in filing reply to the petition, nor the learned Single Judge was justified in directing the Chief Secretary to realise the amount of cost from salary of that officer.. The direction to the appellant no.1 to deposit the amount of costs of Rs. 2000/- with the High Court Legal Aid Committee therefore, cannot be upheld. The learned Counsel for the parties have informed us that subsequently an affidavit-in-reply was filed on behalf of the appellants also and the petition is disposed of by the learned Single Judge on merits vide judgment dated September 20, 1995. Having regard to the facts and circumstances of the case, we are of the opinion that the direction issued to the Chief Secretary of the State of Gujarat to hold an inquiry into the matter and determine the responsibility of the officer concerned who had neglected or made default in filing reply to the writ petition and to recover the amount of cost from salary of that officer as well as direction issued to appellant no.1 to deposit the amount of costs of Rs.2000/- with the High Court Legal Aid Committee, deserve to be set aside.

For the foregoing reasons, the appeal is allowed. The direction given by the learned Single Judge to the Chief Secretary of the State of Gujarat to hold an inquiry into the matter and determine the responsibility of the officer concerned who had neglected or made default in filing reply to the writ petition and to recover the amount of cost from the salary of that officer as well as direction to appellant no.1 to deposit the amount of costs of Rs.2000/- with the High Court Legal Aid Committee contained in the interim order dated July 19, 1995 passed in Special Civil Application No. 4170/94, are hereby set aside.

Pursuant to the order passed by the Division Bench in Civil Application No. 1994/95 which was filed in Letters Patent Appeal No.790/95, the appellants have

deposited an amount of Rs. 2000/- in the High Court. Office is directed to refund the said amount to the appellants after due verification. There shall be no orders as to costs.

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(patel)